ONG AH LONG

v.

DR. S. UNDERWOOD

FEDERAL COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
GEORGE SEAH FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 118 OF 1982]
29 JULY 1983

TORT: *Negligence - Whether appellant wholly to be blamed - Contributory negligence - Test for - Whether respondent liable too.*

DAMAGES: *Quantum of - Loss of pre-trial and post-trial earnings - Difference between loss of future earnings and earning capacity - Special damages - Whether to be specifically pleaded and strictly proved.*

CIVIL PROCEDURE: *Statement of claim - Amendment at trial - Whether properly pleaded - Whether trial Judge erred in law in allowing the amendment - When appellate Court can disturb the trial Judge's conclusions.*

This was an appeal against the decision of the High Court, Ipoh (Anuar J) which gave judgment for the plaintiff/respondent and awarded him the sum of RM2,017,440 as general and special damages for the injuries and loss suffered by him as a result of an accident on 21 March 1967 at about 7.30 p.m. at Hugh Low Street, Ipoh. Prior to the accident, the respondent had parked his motor car No. AG 613 on the left side of Hugh Low Street, Ipoh and came out and locked the front offside door. After that as the respondent was walking to the rear of his motor car with the intention of checking the lock of the boot the defendant/appellant who was then driving motor van No. AG 7995 and coming from the opposite direction grazed against the respondent's left arm and the respondent fell unconscious and he suffered injuries and loss. The respondent claimed that as a result of the injuries, he was unable to work for two months and for the duration of twenty weeks after that he suffered partial disability. He also claimed that his left hand became weak and unsteady after the accident and in spite of regular exercises and physiotherapy treatment the hand still remained weak coupled with tremors, consequently, he was unable to carry out operations in plastic surgery for which he claimed to be specially trained.

The appellant in his defence denied that he was in any way negligent in having caused the accident and in the alternative averred that it was contributed to by the negligence of the respondent. He also denied that the respondent had suffered any loss as a result of the accident and injuries suffered thereby. At the conclusion of the trial the learned Judge had held the appellant to be solely responsible for the accident and the injuries caused to the respondent and awarded the sum of RM2,017,440 as general and special damages. The appellant appealed against the quantum and liability.

There were 14 grounds of appeal and one of the grounds was whether the trial Judge had erred in law in allowing the amendment in the statement of claim by including the words "Partial loss of earnings for further period of 28 weeks at RM300 a week and still continuing on an unspecified rate to be assessed" at the date of the trial at the High Court. The application for amendment was made by the learned Counsel for respondent at the commencement of the trial on the grounds that the respondent was a qualified plastic

surgeon and as a result of his injuries he would not be able to continue his practice as one and had to abandon his dream of being a leading plastic surgeon in the country. The learned Counsel for the appellant objected to the application to the amendment on the grounds *viz.:*

(1) The particulars of special damages as they stood covered the period from the date of the accident i.e. 21 March 1967 to the end of October 1967 - a period of 28 weeks. Any loss thereafter would have been known at the date of filing the summons on 6 January 1972. Again for more than 9 years after that no application for amendment of the pleadings was made in spite of the fact that the plaintiff had every opportunity but had failed to do so.

(2) The proposed amendment under special damages did not comply with the requirements of a special damage item in the sense that it was not ascertained as a liquidated sum.

It was further submitted that although the Court has a general discretion to allow amendment at any stage of a civil proceeding, the discretion had to be judicially exercised because the amendment would change the whole nature of the claim. However, the trial Judge allowed the amendment and thereupon the learned Counsel for the appellant unsuccessfully applied for adjournment to enable him to look into the matter which had caught him by surprise and if necessary to take instructions from his client.

Held:

[1] There was no question of contributory negligence on the part of the respondent. The appellant was wholly to be blamed. The test for contributory negligence in the case of a pedestrian was not, whether he was under a duty of care towards the appellant, but whether he was acting as a reasonable man and within reasonable care.

[2] For special damages, in contrast to general damages, the actual loss should be specifically pleaded and strictly proved. They are recoverable only where they can be included in the proper measure of damages. The amendment to the statement of claim lacked particularity, thus departing from the rules of pleading. The trial Judge erred in allowing the amendment.

[3] The trial Judge had not only accepted the probable income without any satisfactory evidence but had also failed to treat the post-trial loss as general damages in accordance with the accepted principle and practice.

[4] The important difference between loss of future earnings and loss of earning capacity is that compensation for the former is awarded for real assessable loss proved by evidence.

[5] The learned Judge had failed to make a specific finding of fact on the evidence. It was not clear on what basis he assessed the damages for loss of earnings. The respondent had not lost any future earnings but had only a diminished earning capacity.

[6] The award of RM1,118,440 for post-trial loss of earnings and RM899,000 under special damages for pre-trial loss of earnings was set aside. The award for:

a) pain and suffering, RM5,000

b) loss of earnings for two months, RM4,000

c) partial loss of earnings for 20 weeks, RM4000

d) damage to wrist watch, RM200

all of which have been agreed upon by the parties were confirmed.

[7] The revised Federal Court award:

General damages	
a) For pain and suffering	RM 5,000
b) Loss of earning capacity	RM51,000
Total	RM56,000
Special damages	
a) Loss of earnings for 2 months @ RM2,000 p.m.	RM 4,000
b) Partial loss of earnings for 20 weeks at RM200 per week	RM 4,000
c) Damage to wrist watch	200
Total	8,200

Interest

a) 6% on general damages from the date of service of the writ instead of 8% as awarded.

b) 3% on special damages from date of accident instead of 4%

[Appeal allowed with costs.]

Cases referred to:

Lewis v. Denye [1939] 1 All ER 310
Davies v. Swan Motor Co. [1949] 1 All ER 620
Lee Hup Transport & Co. and Anor. v. Wong Kong [1967] 2 MLJ 93
Ilkiw v. Samuels [1963] 1 WLR 991
Murtadza bin Mohamed Hassan v. Chong Swee Pian [1980] 1 MLJ 216
Sam Wun Hoong v. Kader Ibramshah [1981] 1 MLJ 295
Domsalla v. Barr [1969] WLR 630
Phillips v. Phillips [1878] 4 QBD 127
Perestrello E. Companhia Limitada v. United Paint Co., Ltd. [1969] 3 All ER 479
Lim Eng Kay v. Jaafar bin Mohd. Said [1981] FC App 57
Mat Jusoh bin Daud v. Syarikat Jaya Seberang Takir Sdn. Bhd. [1982] CLJ (Rep) 562; [1982] 2 MLJ 71
British Transport Commission v. Gourley [1956] AC 185
Joyce v. Yeomans [1981] 1 WLR 549
Lucock v. Mildren and Chamberlain [1962] 2 Lloyds Rep 325
Billingham v. Hughes [1949] 1 KB 643
United Plywood and Sawmill Ltd. v. Lock Ngan Loi [1970] 2 MLJ 237
Ashcroft v. Curtin [1971] 1 WLR 1731
Rasidin bin Partorjo v. Frederick Kiai [1976] 2 MLJ 214
Multar v. Lim Kim Chet [1982] CLJ (Rep) 237; [1982] 1 MLJ 184
Fairley v. John Thompson (Design and Contracting Division) Ltd. [1973] 2 Lloyd's Rep 40
Dass v. Masih [1968] 1 WLR 756
H.W. West & Son Ltd. v. Shephard [1963] 2 All ER 625
Phillips v. South Western Railway Co. [1879] 4 QBD 406
Mitchell v. Mulholland (No. 2) [1971] 2 WLR 1271
Fletcher v. Autocar and Transporters Ltd. [1968] 2 QB 322; [1968] 1 All ER 726
Senior v. Barker & Allen Ltd. [1951] 1 All ER 818
Rowden v. Clarke Chapman Co. Ltd. [1967] 3 All ER 608
Mallett v. McMonagle [1970] AC 166

Legislation referred to:
Evidence Act 1950, s. 73A

Other sources referred to:
Halsbury's Laws of England 4th Edn., Vol. 11 p. 218 para. 386
MacGregor on Damages 14th Edn., p. 1012 para. 1498
Mayne and MacGregor on Damages 12th Edn., para. 970

For the appellant - Khoo Eng Chin (Selvarajah with him); M/s. Kean Chye & Sivalingam
For the respondent - P.S. Gill (Philip Leong with him); M/s. Cheang Lee & Ong

JUDGMENT

Syed Agil Barakbah FJ:

This appeal arose from the decision of the High Court at Ipoh which gave judgment for the plaintiff/respondent and awarded the sum of RM2,017,440 in his favour in general and special damages due to the injuries suffered by him and caused by the negligent driving of the defendant/appellant of a motor van AG. 7995 which grazed against the respondent's left arm while he was walking along Hugh Low Street, Ipoh at about 7.30 p.m. on 21 March 1967. Prior to the accident the respondent parked his car AG. 613 on the left side of Hugh Low Street, came out and locked the front offside door. After that he walked to the rear of the car with the intention of checking the lock of the boot. As he was walking he saw the van coming from the opposite direction. The next moment he was knocked by the van and fell unconscious. As a result of the accident he suffered injuries as described in detail in the judgment of the learned Judge. The respondent claimed that as a result of the injuries he was unable to work for two months and for the duration of twenty weeks after that he suffered partial disability. His more serious claim is that his left hand became weak and unsteady after the accident and in spite of regular exercises and physiotherapy treatment the hand still remained weak coupled with tremors. As a result he was unable to carry out operations in plastic surgery for which he claimed to be specially trained.

The appellant in his defence denied that he was in any way negligent in having caused the accident and in the alternative averred that it was contributed to by the negligence of the respondent. He also denied that the respondent had suffered any loss as a result of the accident and the injuries suffered thereby. He alleged that while his van was about to pass the respondent immediately prior to the accident, the respondent raised his elbow up at the same time bending his left hand causing the elbow to jut outward and because of that the van grazed against the respondent's hand. The trial Judge having heard the evidence on both sides concluded that the appellant was solely to blame for having caused the accident and the injuries to the respondent and awarded damages as stated earlier.

There are 14 grounds of appeal as set out in the memorandum of appeal. We propose to deal with these grounds according to their relevant subject-matters.

The first three grounds are whether the trial Judge erred in law and in fact that the appellant was wholly to blame for the accident and that there was no contributory negligence on the part of the respondent.

According to the undisputed facts and confirmed by the sketch plan, the relevant left half of the road (Hugh Low Street) as one faces Anderson Road leads to the junction where there is a traffic light. The width of that part of the road (A-B) is 25 feet 9 inches. Situated to its left is a parking bay (A-H) which is 7 feet 4 inches wide and 19 feet 6 inches long (H-I). On its right run two lanes demarcated by white lines. Along the centre of the road

proper is a concrete cement divider. Prior to the accident the appellant was driving the van along the first lane on the left and the respondent was walking from the opposite direction after parking his motor car (K in plan) inside the parking bay (I-H). The width of the car is given as 5 feet 5 inches. The stationary position of the van as shown in the sketch plan (C, D, E & F) is that its nearside front at D is 9 feet 8 inches away from the left edge of the road at A, indicating that it is 2 feet 4 inches away from the side of the parking bay at H. The van had stopped at a slight angle towards the right since its nearside rear wheel at C is 8 feet 6 inches away from the left edge of the road at A. It is closer to A by 1 foot 4 inches.

It was submitted that the respondent's car was probably parked very close to the left hand side of the bay basing on the repondent's admission in cross-examination of having cultivated the habit of parking his car in that manner. There was therefore further space along the offside of the car within the bay (H-I) of approximately 1 foot 3 inches. The van having travelled about 9 feet 6 inches alongside the parking bay and giving allowance for its door handle to be between 2 feet and 2½ feet behind point D, the open space available for the respondent to walk through would be about 2 feet 7 inches. That, however, is an assumption without any supporting evidence. No doubt the appellant stated that the repondent was walking about 6 inches away from the nearside of the van which was about 2½ feet away from the offside of the parked car. However, the learned Judge rejected his evidence that the impact was caused by the respondent on grounds of material discrepancies between his evidence, his pleadings and his police report not to mention the vital contradictions between his evidence and that of the lady passenger seated next to him in the van at the material time (DW6) whom the learned Judge treated as an unreliable witness. It should be borne in mind that DW6 in her position was nearer to the respondent than the appellant whose full view of the respondent would have been blocked to a certain extent by her. At the material time the appellant had also to concentrate on the road ahead in order to come to a stop in compliance with the traffic light which had turned red. Immediately prior to the impact he had swerved the van to the right and in all probability, to avoid knocking into the respondent. Having regard to the above, we agree with respect with the learned Judge's conclusions that there is no question of contributory negligence on the part of the respondent, that the appellant was wholly to blame for failing to pay attention to the presence of other road users and in consequence thereof failed to allow sufficient space between his van to enable the respondent to pass safely. The learned Judge applied the correct test in that the appellant had failed to prove that the respondent did not on his own interest take reasonable care of himself and contributed by that want of care to his own injury. (*Lewis v. Denye* [1939] 1 All ER 310). The test for contributory negligence in the case of a pedestrian is not whether he is under a duty of care towards the defendant, but whether he was acting as a reasonable man and within reasonable care. (Per Denning LJ in *Davies v. Swan Motor Co.* [1949] 1 All ER 620).

The next ground is whether the trial Judge erred in law in allowing the amendment in the statement of claim by including the words "... and still continuing on a specified rate to be assessed", at the date of the trial. The application for amendment was made by the learned Counsel for the respondent (plaintiff in the Court below) at the commencement of the trial on the grounds that his client was a qualified plastic surgeon and as a result of his injuries he would not be able to continue his practice as one and has to abandon his dream of being a leading plastic surgeon in the country. The application was objected to on several grounds which unfortunately do not appear in the record of proceedings. The learned trial Judge allowed the amendment and thereupon the learned Counsel for the appellant unsuccessfully

applied for adjournment to enable him to look into the matter which had caught him by surprise and if necessary to take instructions from his client. The latter part does not also appear in the record of proceedings.

The amendment to para. (b) under Particulars of special damages reads as follows:

> (b) Partial loss of earnings for further period of 28 weeks at RM300 a week **and still continuing on an unspecified rate to be assessed."** (Emphasus is for the purpose of clarity).

The grounds of objection to the amendment appear to be twofold, *viz.*:

(1) The particulars of special damages as they stood covered the period from the date of the accident i.e. 21 March 1967 to the end of October 1967 - a period of 28 weeks. Any loss thereafter would have been known at the date of filing the summons on 6 January 1972. Again for more than 9 years after that no application for amendment of the pleadings was made in spite of the fact that the plaintiff had every opportunity but had failed to do so.

(2) The proposed amendment under special damages does not comply with the requirement of a special damage item in the sense that it is not ascertained as a liquidated sum.

It was further submitted that although the Court has a general discretion to allow amendment at any stage of a civil proceeding, the discretion has to be judicially exercised because the amendment would change the whole nature of the claim. The pleading at para. (b) as it originally stood was quite precise and complete. The amendment has taken the appellant not only by surprise but defeats the cardinal rule of pleading in civil cases which is meant to avoid such element of surprise. The *bona fides* of this amendment was therefore highly questionable.

It is a well established principle that special damages in contrast to general damages, have to be specifically pleaded and strictly proved. They are recoverable only where they can be included in the proper measure of damages and are not too remote (see *Halsbury's Laws of England* 4th Edn., Vol. 11 p. 218 para. 386). That in our view is the cardinal principle adopted by all Courts both in England and this country. The same principle was adopted by Ong Hock Thye FJ (as he then was) in *Lee Hup Transport & Co. and Anor. v. Wong Kong* [1967] 2 MLJ 93 which was an appeal on quantum of damages. Quoting an excerpt from the judgment of Wilmer LJ in *Ilkiw v. Samuels* [1963] 1 WLR 991 he held that the general damages should not be awarded as though they were special damages properly pleaded and proved. Similarly Chang Min Tat FJ (as he then was) in *Murtadza bin Mohamed Hassan v. Chong Swee Pian* [1980] 1 MLJ 216 applied the principle in *Ilkiw v. Samuels* (*supra*) that special damages if pleaded as in that case could be recovered. The principle was also adopted by Mohamed Azmi J (as he then was) in *Sam Wun Hoong v. Kader Ibramshah* [1981] 1 MLJ 295 in the Federal Court.

The reason that special damages have to be specifically pleaded is to comply with its object which is to crystallise the issue and to enable both parties to prepare for trial (per Edmund Davies LJ in *Domsalla v. Barr* [1969] WLR 630, 634). In special damages claims the exact loss must be pleaded where the precise amount of item of damages has become clear before the trial either because it has already occurred and so become crystallised or because it can be measured with complete accuracy (*MacGregor on Damages* 14th Edn., p. 1012 para. 1498). The purpose is to put the defendants on their guard and tell them what they have to meet when the case comes on trial (per Cotton LJ in *Phillips v. Phillips* [1878] 4 QBD 127, 139).

With regard to amending the statement of claim the test applied by the Courts in England in deciding whether to allow such amendment or otherwise proceeds on the principle that the damages suffered by the plaintiff is of a kind that is the necessary and immediate consequence of the wrongful act complained of. In *Perestrello E. Companhia Limitada v. United Paint Co., Ltd.* [1969] 3 All ER 479 the Court of Appeal refused the plaintiffs leave to amend their statement of claim to include the loss of profits on the ground that damage suffered by them is not the necessary and immediate consequence of the wrongful act complained of.

In *Domsalla v. Barr* (*supra*), it was held, allowing the appeal and dismissing the cross-appeal,

(1) that where it is proposed to allege that there were any special circumstances which would probably lead the plaintiff to sustain in the future losses which would not in the ordinary way reasonably be expected to flow from the accident, those circumstances should be pleaded; that by adverting to the plaintiff's intention to set up in the steel erection business on his own account there was being introduced into the case an entirely new element which had not been adumberated in the statement of claim; and that by so doing the plaintiff was going outside his pleading and objection might properly have been taken to the leading of evidence on that matter.

On p. 636 Edmund Davies LJ quoted the observations of Lord Donovan in *Perestrello's* case:

> ... Accordingly, if a plaintiff has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act, he must warn the defendant in the pleadings that the compensation claimed will extend to this damage, thus showing the defendant the case he has to meet and assisting him in computing a payment into Court. The limits of this requirement are not dictated by any preconceived notions of what is general or special damages but by the circumstances of the particular case. The question to be decided does not depend on words, but is one of substance (per Bowen LJ in *Ratcliffe v. Evans* [1892] 2 QBD 524, 529).

Our attention was drawn to the recent cases of *Lim Eng Kay v. Jaafar bin Mohd. Said* Federal Court Civil Appeal No. 57 of 1981 [1982] CLJ (Rep) 190 and *Mat Jusoh bin Daud v. Syarikat Jaya Seberang Takir Sdn. Bhd.* [1982] CLJ (Rep) 562.

In the first case the Court treated pre-trial loss of earnings erroneously pleaded under general damages as a purely technical mistake which did not in any way affect the substance, in the light of evidence sufficiently proved to be real and substantial. There was also the prayer for "any other relief which the Honorable Court deem fit to grant" which considered with the other prayer entitled the Court to make such assessment. The trial proceeded without the necessity of making any amendment.

In the latter case a claim for loss of earning capacity under general damages was treated as a pre-trial loss of actual earnings which was sufficiently proved at the trial to an amount exceeding the sum pleaded in the statement of claim but asked for under general damages. The trial Court took the view that since the amount of loss was proved by evidence, justice demands that the figure pleaded should be ignored and the effect of such evidence entitled the Court to increase the amount. It is to be noted that in both cases the damage suffered appears to be the necessary and immediate consequence of the wrongful act complained of and proved by real and substantial evidence. Be that as it may, we prefer the view that in practice special damages have to be specifically pleaded having regard to prevalent authorities. It requires the plaintiff to plead and particularise any item of damage which represents the out-of-pocket expenses or loss of earnings incurred prior to the trial, and which

is capable of substantially the exact calculation. It is commonly referred to as special damages in the sense that fairness to the defendant requires it to be pleaded. (Per Lord Donovan in *Perestrello v. United Paint Co. Ltd.* (*supra*) and per Lord Goddard in *British Transport Commission v. Gourley* [1956] AC 185, 206). The obligation to particularise is stated in *Mayne and MacGregor on Damages* 12th Edn., para. 970:

> Special damage consists in all items of loss which must be specified by (the plaintiff) before they may be proved and recovery granted. The basic test of whether damage is general or special is whether particularity is necessary or useful to warn the defendant of the type of claim and evidence, or of the specific amount of claim, which he will be confronted with at the trial.

As stated by Diplock, LJ in *Ilkiw v. Samuels* (*supra*) on p. 1006:

> ... In my view, it is plain law - so plain that there appears to be no direct authority because everyone has accepted it as being the law for the last one hundred years - that you can recover in an action only special damages which has been pleaded, and, of course, proved. In the present case, evidence was called at the trial the effect of which was that the plaintiff had sustained special damage of a very much larger sum, amounting, I think it would work out at, to something like £2,000 - at any rate, a very much larger sum than £77. This was not pleaded, and no application to amend the statement of claim to plead it could be made because of the agreement already arrived at, at the sum of £77 for special damage. The evidence about the loss of earnings in excess of £77 was admissible, not as proof of special damage (which had not been pleaded) but as a guide to what the future loss of earnings of the plaintiff might be.

Turning to the present case under appeal we agree that para. (b) as it originally stood contains sufficient particulars but the amendment lacks such particularity as it is pleaded to be still continuing not at the rate of RM300 a week as stated in the former but on an unspecified rate to be assessed. We are of the view that this is a departure from the rules of pleading. It is of a different specie unconnected with the pleading as it originally stood. It is another matter if the pre-trial loss is based at the rate of RM300 a week and still continuing. The respondent would have known of his loss at the date of filing the summons which is more than four years after the accident but after that he allowed more than nine years to lapse before making the application for amendment without showing the appellant the case he has to meet and assisting in computing a payment into Court. The amendment includes pre-trial as well as post-trial losses which necessarily require the respondent to specify the loss which he claims and which would have been in his knowledge particularly to the loss of earnings incurred prior to the trial. A sum of RM4,000 has been agreed between the parties for item (b) and no amendment should have been allowed to plead a very much larger sum than that amount and which works out to nearly two million ringgit in special damages. We have no alternative but to conclude that the trial Judge erred in allowing the amendment.

In ground 6 the question is whether the learned Judge rightly concluded that the difference in the medical opinions of the three specialist witnesses is only a matter of degree.

In the case of evidence given by expert witnesses the appellate Court should be slow to interfere with the Judge's findings because the trial Judge who has observed the demeanour of the witnesses was in a significantly better position than the appellate Court to assess the value of the evidence given. The appellate Court will only disturb his conclusion if there are insufficient grounds for his findings or that he has adopted a wrong approach in arriving at that conclusion indicating that he has not taken proper advantage of having seen and heard the witnesses. (*Joyce v. Yeomans* [1981] 1 WLR 549).

The evidence on record shows that the learned Judge after considering the evidence of Dr. Sivananthan (PW2), Professor Pillay (PW3) and Professor Subramaniam (DW1) concluded that the opinion of DW1 differed only to the degree of disability of the left hand of the respondent. In the final analysis he stated as follows -

> It is evident that certain findings are not in dispute. All the three experts were of the opinion that the plaintiff has suffered a severe injury which caused weakness in the left arm. The important difference in their opinion can be narrowed down to the question of the degree of the disability of the left arm when performing operations.

It was submitted that both Dr. Sivananthan and Professor Pillay (PW2 and PW3) were of the opinion that the respondent would not be able to perform plastic surgery. Both have examined the respondent on separate occasions and have supplied their written reports and opinions. (Ex. P2 and Ex. P3). In his evidence Dr. Sivananthan said - "If I have such disability ... I would say that I cannot perform surgery involving plastic surgery and micro surgery operation." Similarly Professor Pillay testified "Due to injury the plaintiff is not able to perform delicate surgery" and concluded "... the injury has caused total disability." On the other hand, Professor Subramaniam (DW1) while accepting that the respondent's injury was serious stated that the respondent suffered moderate disability meaning that he could still hold a forcep to carry out an operation which however would take about double the time that would have taken him prior to the injury and agreeing that the respondent might not be able to do certain operations. He said - "The plaintiff should be able to carry out plastic surgery operation. There is no reason why he should not be able to do so." It is clear therefore that there is a material difference between the opinions of the medical experts who appeared for the respondent and the expert who appeared for the appellant at the trial. The difference is to the usability of the respondent's left arm and not to the degree of usability; the first opinion saying that he cannot perform any plastic surgery operation at all while the other, that he can perform simple but not major operations. There is no dispute among the experts from their reports that the power grip in the respondent's left hand was much weaker than the right hand. That is due to weakness in the left forearm muscles. The respondent experienced fine tremors in his left wrist and fingers in his left hand when he made an effort to sustain a grip on an object.

As regards the other relevant grounds, it was submitted that the two experts Dr. Sivananthan and Professor Pillay differed in their diagnosis and the cause of the injury. The former said the defect brought by muscular injuries involved the extensor and supriator muscles. The latter was of the opinion that neither the extensor nor the supriator muscles were affected. He went on to say that in some way the posterior interossis nerve which runs in the substance of the supriator muscle, was affected but he was not positive whether the nerve was damaged. He agreed that if a test was conducted on the nerve which controls the muscle, it could give a positive answer but did not think that it was necessary to use nerve conduction tests. He did only a clinical examination and based his opinion on that and the nature of the injury. Dr. Sivananthan also based his opinion on a similar examination apart from reading Dr. Underwood's own report. On the other hand, Professor Subramaniam in the course of examining the respondent also instructed one Professor Loh to conduct an electromyogram/Nerve conduction and EMG test which he said was necessary in order to find out the condition of the nerves. The result of the two tests carried out shows the EMG and nerve conduction velocities were within normal limits. Hence the opinion of Professor Subramaniam based on the objective tests does not support any nerve injury.

It was further submitted that the learned Judge apart from failing to consider the above, also did not bear in mind the fact that the respondent is ambidextrous. The respondent admitted that he was able to cut and stitch with both hands equally well by standing on one side of the patient. Later he found that he could not carry out certain movements with his left hand, and had to change sides and use his right hand. It clearly indicates that he was still able to do plastic surgery. That is borne out by another admission that his hospital which was fully equipped was opened in September 1968 and he was hoping that his condition would improve. However, he was unable to do major surgery after the accident and all he could do was minor operations although he could not hold the forceps with his left hand. There was the evidence of the nurse (PW7) that he did carry out minor operations after the accident.

Now, turning to the grounds of judgment, the trial Judge touching on the respondent's evidence said - 'He can still perform simple operations such as removing a mole or warts. But he cannot do major plastic surgery." However, he concluded thus:-

> Having considered the evidence of the three experts, I have no hesitation in accepting the findings of Dr. Sivananthan and Professor Pillay in that the plaintiff cannot now perform plastic surgery.

Unfortunately he did not stick to that conclusion because after touching on Professor Subramaniam's opinion which he did not think was totally correct and would not accept it without reservations, he further concluded:-

> In the event I have no doubt that the plaintiff has suffered permanent disability which was caused by the accident and that now he is now unable to use his hand satisfactorily to perform a major plastic surgery. He has therefore suffered loss and entitled to damages.

He then proceeded to assess damages.

It is glaring that on the one hand the learned Judge accepted the opinions of Dr. Sivananthan and Professor Pillay to the exclusion of that of Professor Subramaniam in that the respondent cannot now perform plastic surgery but surprisingly, he later accepted Professor Subramaniam's opinion that the respondent can do minor plastic surgery. With respect, we have no alternative but to conclude that the learned Judge has failed to make a specific finding of fact on the evidence. It is not clear whether he assessed the damages for loss of earnings on the basis of the respondent's inability to perform major plastic surgery or any form of plastic surgery at all. In our judgment he has not taken proper advantage of having seen and heard the expert witnesses in order to assess the value, reliability and the impressiveness of the evidence on either side to justify his conclusion.

It is to be noted that both Dr. Sivananthan and Professor Pillay stated that the respondent would not be able to perform micro-surgery as well because of his disability. According to the latter the concept of micro-surgery was known about seven to ten years ago and in Singapore, some time in 1970. He was also of the opinion that there was little problem for a plastic surgeon to progress in micro-surgery. However, in our view, in the absence of evidence that the respondent has performed any micro-surgery before or after the accident, this factor should not be included in assessing any damage for the respondent's loss of earnings. The trial Judge did not appear to touch on the matter in his judgment.

The remaining grounds are whether the trial Judge correctly awarded the pre-trial and post-trial loss of earnings on the strength of the evidence adduced. It was submitted that he was wrong in giving weight to the figures suggested by PW2 and PW3 as indicative of the earning capacity of a plastic surgeon and that he applied the wrong principle in making the award which is alleged to be manifestly high and excessive in the circumstances.

That the learned Judge relied on the evidence of Dr. Sivananthan (PW2) and professor Pillay (PW3) on the probable earning of a plastic surgeon which he concluded in his grounds of judgment to be between RM30,000 and RM45,000 per month is without doubt. According to Dr. Sivananthan a plastic surgeon would be able to earn between RM30,000 and RM40,000 a month. He is an orthopaedic surgeon and although he has also done plastic surgery on cases referred to him by the respondent, he admitted that his estimation was only a guess. On the other hand, Professor Pillay (PW3) said a plastic surgeon in Singapore should be able to earn a minimum monthly income of RM20,000 and RM50,000 is quite a usual income. He is also an orthopaedic surgeon having no experience in plastic surgery. His opinion on the matter was not based on personal knowledge and experience but rather on hearsay. It is to be noted that both witnesses were initially called to testify on the injuries and the disabilities suffered by the respondent. The respondent in this regard, thought that he would be able to earn between RM30,000 and RM45,000 a month if he could carry on plastic surgery. Having regard to the strict proof required of special damages we are of the opinion that the learned Judge should have been more cautious in accepting their evidence. Being experts in their own field of surgery and having based their opinions on guess work and hearsay, it is unsafe to rely on their evidence on the matter. It would not have been difficult to call at least a qualified plastic surgeon to prove that his earnings came to the figure suggested but none was called to testify. Although the two witnesses as stated by the learned Judge are eminent doctors who are doing well in their own field of orthopaedic surgery, they cannot be termed as proper witnesses for the purpose of giving an opinion on the probable income of a plastic surgeon. (See Lord Justice Upjohn in *Lucock v. Mildren and Chamberlain* [1962] 2 Lloyds Reports 325). For that matter even the respondent himself did not say how much he earned for the two major plastic surgery operations which he said he carried out at Assunta Hospital, Kuala Lumpur, prior to the accident. It is true as the learned Judge remarked that the figures suggested by the two witnesses have not been challenged. However, the burden is on the respondent to prove his case by adducing satisfactory evidence. Taking these into consideration, we conclude from the evidence which we have examined, that the figures suggested and accepted by the Judge are too speculative and uncertain to justify acceptance as the probable if not the actual, earnings of a plastic surgeon; *a fortiori* when the learned Judge conceded that they are speculative but still used them to arrive at the average possible income. Thereafter he considered both the awards for pre-trial and post-trial loss under special damages, proceeded to compute and assess the damages accordingly. It is therefore clear that he has not only accepted the probable income without any satisfactory evidence but has also failed to treat the post-trial loss as general damages in accordance with the accepted principle and practice.

In computing the damage under pre-trial loss, he accepted the respondent's income for 1968 as RM40,000 and the income on the date of the trial as RM72,000. He then divided the latter figure by half and added it with the former, arriving at the figure of RM56,000. He said, "This I think should be the average actual income of the plaintiff between 1968 and 1982 i.e. RM56,000." Then he continued to compute the respondent's estimated earning capacity at RM35,000 per month which he reduced to a median figure of RM15,000 after taking into consideration the number of years in which the respondent would require to establish his practice and to catch up before he would really earn that much. He further said,

> His income per year would therefore be RM180,000. This is his possible earning capacity. This loss of income during the pre-trial period would be (RM180,000 - RM56,000) = RM124,000 per annum. This would work out to RM1,798,000 for 141/2 years from 1968 to 1982.

> From this I would deduct a sum for Income Tax which would be in the 50% bracket. Deduction of Income Tax would be 50% of RM1,798,000 = RM899,000. His total estimated pre-trial loss of income would therefore be RM899,000."

Now, in accepting the sum of RM40,000 as the respondent's income for 1968, it was submitted that the learned Judge appeared to have accepted the submission of the learned Counsel (see p. 77C of the record). However, we do not think that is entirely correct because of the evidence that the income tax returns for 1969 which is his earning for 1968 show the figure of RM40,030 which might well be the one accepted by the learned Judge. We note that the income tax returns for the years 1966, 1967 and 1970 till 1979 were tendered in evidence. There were no such returns for 1971 and for 1980 to 1982. No reasons were given for their non-production. For 1982 the respondent stated that his income was RM71,000. He explained that the documents prior to 1968 were lost in the flood but subsequent documents would certainly have been available and produced at the trial especially when the respondent had an accountant to look after his accounts. The accident occurred in March, 1967 and the income for that year is available from the tax returns. There was no reason why the Judge had omitted it as the respondent's income immediately after the accident. The other important factor from the above is that except for the low income of RM13,447 in 1968 which the respondent said was due to the flood, the rest shows a gradual increase in his income as a general practitioner, the highest being in 1976 which is RM77,197.

In this regard, we have in mind *Billingham v. Hughes* [1949] 1 KB 643. This was a case of a 51 year old doctor and radiologist who as a result of being knocked down by an army vehicle, suffered injuries and was unable to continue his practice as a general practitioner. The trial Judge accepted the proposition that he could as a skilled radiologist extend his practice in that branch of his profession and would have more time at his disposal for that purpose. The Judge awarded him £20,000 damages for loss of future earnings on the basis that his total earnings has amounted to £2,000 a year for 15 years less one-third of the resultant sum for contingencies and in consideration of the facts that the plaintiff would receive a large capital sum and might possibly increase his earnings as a radiologist. On appeal the sum was reduced by half on the ground that it was excessive. On p. 650 Singleton, LJ had this to say:

> ... After full and careful consideration, I have reached the conclusion that the sum of £20,000 is much too high. The Judge rather assumed that the doctor could make £2,000 a year for fifteen years, that is £30,000, and reduced that figure to £20,000 for reasons which he gave. Having regard to all the facts, and in particular, to the opportunity of increased earnings on the radiology side, in my view the damages on this head should be reduced to the sum of £10,000. It is now clear that Dr. Billingham's loss is not so much as £2,000 a year, as he receives the whole of the fees received from his work as a radiologist, whereas before his accident the fees so received were shared between him and his partner. In 1945 those fees were £591, in 1946, £575, and in 1947 the fees received increased to £1,286. Of course, Dr. Billingham would have more time to give to this work, and consequently the opportunity of earning more from it, after he gave up general medical practice.

Having regard to the above, the learned Judge should have taken into consideration the increase in the respondent's income in his practice as a general practitioner over the years after the accident in computing a fair sum for pretrial loss.

Turning to the computation by the Judge, he accepted the respondent's evidence of the annual income in 1982 as RM72,000. We cannot understand the evidence of the annual income in 1982 as RM72,000. We cannot understand the reason for his adding half of the amount to the 1968 income in order to arrive at the average actual income. We cannot say whether he

had in mind the increase in the respondent's income as stated above because he did not give any reason. He then arrived at the figure of RM56,000 as the average annual income of the respondent between 1968 and 1982. We notice that the same amount was suggested by the respondent's Counsel in his submission as a median figure. With respect we do not think that is the proper method of computation. It would be more appropriate to obtain the total income during the years from the date of the accident till the date of hearing available from the evidence and divide it with the same number of years in order to arrive at the average annual income. Then he accepted the sum of RM35,000 as the reasonable monthly income of the respondent as a plastic surgeon and for the reasons stated by him, fixed RM15,000 as the respondent's monthly earning capacity. Obviously the RM35,000 monthly income was accepted from the sums suggested by PW2 and PW3. That as we have held earlier cannot be a reasonable and fair estimation and it follows that the figure of RM15,000 does not truly reflect the average monthly earnings of the respondent. In fact the Judge has exceeded the amount asked for by the Counsel in his submission by almost twice the sum. The latter submitted the figure of RM64,000 per annum as pre-trial loss. The Judge awarded RM124,000. The respondent pleaded for partial loss of earnings. The Judge allowed the full loss. That was the reason for his arriving at such a collosal amount of nearly a million ringgit - a sum which we think is inordinately high and manifestly excessive. In the circumstances, the appellate Court is duty bound to interfere with the Judge's award. (See *United Plywood and Sawmill Ltd. v. Lock Ngan Loi* [1970] 2 MLJ 237). The award for post-trial loss which amounts to RM1,118,440 is viewed on similar grounds. The learned Judge has exceeded beyond proportions, by computing the respondent's loss of income at RM29,000 per month on the basis of his monthly earning capacity of RM35,000 and actual income of RM6,000 per month i.e. RM72,000 a year. Taking into account all the facts and circumstances of the case and in particular the wrong principle applied in assessing special damages for further loss of earnings, it now becomes the duty of this Court to re-examine the evidence which is at large in order to make proper assessment.

Having considered the evidence carefully we are of the opinion even though the respondent might have suffered some loss of earnings because of the accident, the evidence is so unsatisfactory that it is impossible to quantify it. (Per Edmund Davies, LJ in *Ashcroft v. Curtin* [1971] 1 WLR 1731). In that case the award for financial loss of the company in which the plaintiff was an active managing director prior to a road accident in which he was seriously injured was reduced to £2,500 under loss of earnings capacity on the ground *inter alia* that in the absence of reliable accounts to quantify the loss, it was impossible to support such a claim.

Now, the general principle is that an injured plaintiff is entitled to damages for the loss of earnings and profits which he has suffered by reason of his injuries up to the date of the trial and for the loss of the prospective earnings and profits of which he is likely to be deprived in the future. There must be evidence on which the Court can find that the plaintiff will suffer future loss of earnings, it cannot act on mere speculation. If there is no satisfactory evidence of future loss of earnings but the Court is satisfied that the plaintiff has suffered a loss of earning capacity, it will award him damages for his loss of capacity as part of the general damages for disability and not as compensation for future loss of earnings (*Ashcroft v. Curtin* (*supra*) and *Rasidin bin Partorjo v. Frederick Kiai* [1976] 2 MLJ 214). It was applied by Syed Othman, FJ (as he then was) in *Multar v. Lim Kim Chet* [1982] CLJ (Rep) 237.

There is a difference between loss of future earnings and loss of earning capacity. The important difference between the two is that compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages. (Per Lord Denning, MR in *Fairley v. John Thompson (Design and Contracting Division) Ltd.* [1973] 2 Lloyd's Rep 40, 41).

We see the same distinction in the present appeal. There is no indication as to what the respondent's earnings were from his general practice and from his plastic surgery practice to enable us to quantify his loss of income in the latter. Such evidence could have been adduced at least till the end of 1968 when the respondent ceased to practise plastic surgery. The income tax returns merely show his total annual income.

With regard to his practice in major plastic surgery, the respondent appeared to have done two operations at Assunta Hospital, Kuala Lumpur, in the course of five years between 1962 to 1967. Again there is no evidence of the amount he was paid for the two operations. The situation gives rise to the question whether he has actually performed major operations or has done a reasonable number of such operations to enable him to make a justifiable claim for any loss of income in that respect. In the first place, except for PW5 perhaps on whom he tried to do major surgery, the rest according to his own admission and the evidence of his nurse (PW7) were all minor operations done under local anaesthetic. The respondent did not have an anaesthetist to perform major operations in his old clinic. No doubt he said he had built a new clinic which was up to date but there is no evidence that the same was available. Apart from that he has and is still carrying on his general medical practice from which his earnings have increased from year to year after the accident.

Secondly, even though the respondent has obtained a Ph.D. in plastic surgery in the University of Tokyo, after a three year course on a Japanese government scholarship sponsored by the Malaysian government, he cannot hold himself out as a specialist in plastic surgery because the degree is not recognised in this country. He resigned from government service before the Specialist Committee could consider him as such after recognising the period of experience he has had in that branch and his expertise. Otherwise he would have had the chance of being recognised as a specialist so long as he remained in the service, on his name being published in the government *gazette.*

Thirdly, as regards the respondent's claim of being posted as a clinical Specialist in the Plastic Surgery section in the General Hospital, Kuala Lumpur, on his return from Japan, there is contradictory evidence from DW5, the Principal Assistant Secretary to the Minister of Health; who testified by referring to the Ministry's letter (Ex. D9) that the respondent was posted as a medical officer until his resignation and that he was not at any time designated and gazetted as a Clinical Specialist. On being recalled to testify the respondent explained that it was only a verbal directive and his official appointment was as a medical officer. He admitted that the operations he carried out at the General Hospital and the Leper Hospital, Sungai Buloh, were all minor ones which materially contradicts his earlier testimony that he performed major operations.

Fourthly, according to the respondent the degree he obtained in Japan permitted him to practise as a plastic surgeon in Japan and that he had in fact practised in Japan. He had written to one Professor Seiichi Ohmori, one of those who had trained him, seeking clarification as to his qualification because it was not recognised in this country. On the other hand, the appellant's solicitors who had also written to the same Professor, received a reply. An attempt to put the letter in as an exhibit was rejected by the Judge after objection by the respondent's Counsel although a copy of the solicitors' letter to the Professor was

admitted as Ex. D10. Strangely Ex. D10 has not been included in the record for reasons which we do not propose to discuss. We are now asked to decide on something which is rather vague and the purpose of which cannot be vouched for certainty as to affect the real issue. All we need say is that s. 73A of the Evidence Act, 1950 may apply if the Professor's letter contains a statement of facts from his personal knowledge relating to the respondent's qualification and it would be admissible if the Professor's attendance in Court could not be secured with reasonable practicability due to his being beyond the seas according to the conditions provided in the section. (Per Lord Denning M.R.in *Dass v. Masih* [1968] 1 WLR 756). In our opinion the fact that the respondent is qualified and has practised plastic surgery in Japan should have been pleaded. The pleading at para. 1 of the statement of claim clearly shows that he is a medical practitioner. It is never pleaded anywhere that he is and has carried out practice of plastic surgery as a specialist. Since no objection was raised as regards its admissibility the weight to be given to such evidence should be less having regard to other evidence of the respondent's lack of opportunity and experience in having carried out major plastic surgery.

Fifthly, regarding the fact that he has spent quite a large sum of money to build a modern clinic at Kuala Kangsar with the intention of making it the best in the country, we are of the view that any loss he might have incurred in the building and thereafter the closing of the clinic and in the disposal of the equipment are too remote on the ground that it is a special circumstance which will probably lead him to sustain in the future losses over and above those which in the ordinary way would reasonably to expected to flow from the accident. The special circumstance should be pleaded. (Per Edmund Davies, LJ in *Domsalla v. Barr* (*supra*)).

For these reasons we conclude that the respondent has not lost any future earnings but has only a diminished earning capacity.

Loss of earning capacity:

Having decided that the respondent has suffered loss of earning capacity which is part of general damages, we are now faced with the difficult task of assessing a fair and reasonable amount for the loss, bearing in mind that a sum of RM5,000 has been agreed upon by the parties for pain and suffering. The other elements such as loss of expectation of life and loss of amenities are not prayed for and no evidence was adduced. We have ruled out the element for pretrial loss of earnings which fall under special damages.

It has to be borne in mind that damages for personal injuries are not punitive and still less a reward. They are simply compensation that will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so far as money can compensate. *British Transport Commission v. Gourley* (*supra*) and *H.W. West & Son Ltd. v. Shephard* [1963] 2 All ER 625. The award under general damages should be a global sum commensurate with the injury sustained and not a full compensation which might result in ruinous consequences to the defendant. (Per Sir Alexander Cockburn, LJ in *Phillips v. South Western Railway Co.* [1879] 4 QBD 406).

In support of this principle the Courts have evolved a particular method for calculating the loss of earning capacity of the plaintiff. The basis is the amount that the plaintiff would have earned in the future and has been prevented from earning by the injury. This amount is calculated by taking the figure of the plaintiff's annual earnings at the time of the injury less the amount, if any, which he can now earn annually, and multiplying this by the number of years during which the loss of earning power will last, which, if the injury is for

the plaintiff's life, will require a calculation of the period of his expectation of working life. This latter figure is generally referred to as the multiplier, and the former figure is now coming to be referred to as the multiplicand (see *Mitchell v. Mulholland (No. 2)* [1971] 2 WLR 1271 at p. 1276, 1284 and 1286). The resulting amount must then be scaled down by reason of two considerations, first that a lump sum is being given instead of the various sums over the years and second that contingencies might have arisen to cut off the earnings before the period of disability would otherwise have come to an end. The method adopted by the Courts to scale down the basic figure is to take the figure intact of present annual earnings and reduce only the multiplier. The cases where the Court adopted this method of assessment are *Phillips v. South Western Railway Co.* (*supra*) and *British Transport Commission v. Gourley* (*supra*) and *Fletcher v. Autocar and Transporters Ltd.* [1968] 2 QB 322 or [1968] 1 All ER 726. Another method commonly used by the Courts in assessing the plaintiff's diminution of earning capacity is to find as a fact (i) for what period, on a balance of chances, earning ability is reduced and (ii) what, on average, the reduction in earnings will be over that period. Cases where the Courts made their estimate of this basis are *Senior v. Barker & Allen Ltd.* [1951] 1 All ER 818; *Rowden v. Clarke Chapman Co. Ltd.* [1967] 3 All ER 608 and *Mallett v. McMonagle* [1970] AC 166.

The first method is clearly not applicable to the facts of this case since the plaintiff was earning more than what he was earning at the time of the accident. On the other hand, the alternative method would be more appropriate. However, before considering the second method of assessment we would like to set out certain material points. Firstly, the permanent partial disability which the plaintiff was complaining and which was confirmed by the expert medical evidence was that the tremor of the left thumb prevented him from performing major plastic surgery only and the plaintiff had to give up the idea of this branch of medical practice since 1968 or thereabout. Secondly, after stopping plastic surgery practice the earnings of the plaintiff from his medical practice had progressively increased from RM13,447 in 1968 to RM40,030 in 1969, RM49,106 in 1970, RM50,000 in 1971, RM47,333 in 1972, RM41,578 in 1973, RM50,749 in 1974, RM53,943 in 1975, RM77,197 in 1976, RM64,764 in 1977, RM76,491 in 1978, RM67,579 in 1979.

There was no evidence of his earnings for the years 1980 and 1981 but in 1982 he stated that his net annual earnings amounted to RM71,000. Thirdly, when the plaintiff took out the writ on 6 January 1972 he only claimed (a) 2 months' total loss of earnings at RM3,000 per month, and (b) 20 weeks' partial loss of earnings at RM300 per week, and (c) general damages. However, at the hearing of the case item (a) was agreed at RM2,000 per month, item (b) at RM200 per week for 20 weeks and item (c) at RM5,000 for pain and suffering and loss of amenities only.

Now, applying the principle enunciated in *Ashcroft's* case (see p. 2161) and in *Frederick Kiai's* case we hold that in the absence of definite evidence of future loss of earning capacity the Court has to arrive at some fair figure. In this statement of claim the plaintiff pleaded that he was suffering from partial loss of earnings for a period of twenty weeks at RM300 per week. At the trial this was reduced by mutual consent to RM200 per week or RM800 per month. We see no valid reason why we could not make use of this as a yardstick to award to the plaintiff damages for his loss of capacity as part of the general damages of his partial disability. Since the plaintiff would now have more time to devote to his general medical practice we would assess an average reduction in earning capacity in the sum of RM800 per month or RM9,600 per year. Having regard to the House of Lords case of *British Transport Commission v. Gourley* (*supra*) we would reduce this sum by 12% for income tax purposes. The net sum after deduction would therefore be RM8,448 or RM8,450 to use a round figure.

The plaintiff was 52 years of age at the date of the trial and we think the useful working life of a major plastic surgeon would be 60 instead of 65 adopted by the learned trial Judge. In other words, there are eight more years to go before the plaintiff reaches the age of 60. This should be discounted for various future contingencies and vissitudes of life. We would use a multiplier of six for the purpose of this case and this would bring the estimated loss of future earning capacity to RM50,700 or RM51,000. We would therefore award to the respondent/plaintiff the sum of RM51,000 as part of general damages for estimated loss of future earning capacity. This sum does not include the RM5,000 already awarded for pain and suffering which has been agreed upon by the parties. The respondent is therefore entitled to RM56,000 as a fair and reasonable award under general damages. In the result the award of RM1,118,440 for post-trial loss of earnings is set aside.

As regards special damages the award of RM899,000 for pre-trial loss of earnings is set aside. The award of (a) RM4,000 for loss of earnings for two months, (b) RM4,000 for partial loss of earnings for 20 weeks at RM200 per week and (c) RM200 for damage to wrist watch, all of which have been agreed upon by the parties, are hereby confirmed.

The present awards are as follows:

General damages:

(a) For pain and suffering	RM 5,000
(b) Loss of earning capacity	RM51,000
Total	RM56,000

Special damages:

(a) Loss of earnings for 2 months at RM2,000 per month	RM 4,000
(b) Partial loss of earnings for 20 weeks at RM200 per week	RM 4,000
(c) Damage to wrist watch	RM 200
Total	RM 8,200

Interest:

With regard to interest, in view of the long delay in which this case came up for trial, there will be 6% interest on general damages from the date of service of the writ instead of 8% as awarded and 3% interest on special damages from the date of the accident instead of 4%. It should be borne in mind that unnecessary delay in the disposal of cases of this nature tends to increase the amount of interest. We will like to remind Counsel of their duty to secure early trials so that this can be avoided.

The appeal is hereby allowed. With regard to costs we order that the appellant is entitled to his taxed costs in this appeal and that the respondent is entitled to his taxed costs in the Court below. The deposit is to be refunded to the appellant.

Also found at [1983] 2 CLJ 198